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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. P. Kooijmans, pursuant to Commission on Human Rights resolution 1989/33

Addendum

Visit by the Special Rapporteur to Zaire

GE.90-10333/1507B

Introduction

1. Mr. Peter Kooijmans, Special Rapporteur visited Zaire from 13 to 20 January 1990, in response to an invitation extended to him on 15 August 1989 by the Zairian Government. The visit was prepared and organized by the Department of Rights and Freedoms of the Citizen (Département des Droits et Libertés du Citoyen - DDLC). During his visit, the Special Rapporteur held discussions with the Vice-Premier Commissaire d'Etat et Commissaire d'Etat aux Droits et Libertés du Citoyen, Maître Nimy Mayidika Ngimbi, and several high officials of the Department, including the Secrétaire d'Etat aux Droits et Libertés du Citoyen, Maître Sabi Ngampoub Mubiem, and the Conseiller-Directeur du Contentieux des Relations Internationales, Professor Lwamba Kutansi. He also held discussions with the Commissaire d'Etat à la Sécurité du Territoire, General Singa Boyende Mosambay, the Président du Conseil Judiciaire, Kamanda wa Kamanda, accompanied by the Premier Président de la Cour Suprême de Justice, Balanda Mikuim Leliel, the Public Prosecutor (Procureur général de la République), Mongulu T'Apangan, the Chief Military Prosecutor (Auditeur général des Forces Armées Zaïroises), General Fariala and the Bâtonnier National, Maître Kisimba Ngoy Ndalewe. The Special Rapporteur further held discussions with several high officials of the Secrétariat d'Etat à la Défense Nationale, headed by the Principal Military Advisor, Colonel Lukama, the Président Général de la Garde Civile, Elite de Paix Kpama Baramoto, accompanied by the Secretary-General of the force, Ordonnateur principal de Paix Ngimbi Bitshiama, the Chef d'Etat-Major du Service d'Action et de Renseignements Militaires (SARM), General Mahele Bokunga, accompanied by his Chef de Cabinet, the Administrateur Général of the Agence Nationale de Documentation (AND), Citoyen Mgbanda, accompanied by three high officials of his service, and with high officials of the Gendarmerie Nationale, headed by the Chef d'Etat-Major Adjoint of the force.

2. The Special Rapporteur visited the Makala Central Prison, where he was briefed by the director and members of his staff. He visited the clinic and several wards, and talked privately with a number of inmates. The Special Rapporteur also visited detention places of the Agence Nationale de Documentation (AND) and the Service d'Action et de Renseignements Militaires (SARM) and talked privately to persons being held there.

3. Finally, the Special Rapporteur visited two local offices of the Département des Droits et Libertés du Citoyen (DDLC), situated in densely populated neighbourhoods of Kinshasa, and was briefed by the directors about their activity.

4. It may be noted that both prior to and during the visit, the Special Rapporteur received information from and held discussions with various non-governmental sources.

5. The Special Rapporteur wishes to express his sincere appreciation and gratitude to the Zairian Government and in particular the DDLC for the preparation of his visit. The Special Rapporteur is most grateful to Professor Lwamba Katansi who kindly accompanied him, and to Mr. Bakulu of the Protocol Section, who greatly facilitated his contacts with the authorities.

I. HISTORICAL BACKGROUND AND LEGAL AND INSTITUTIONAL FRAMEWORK

6. The first 5 years of Zaire's 30 years' existence as an independent State were characterized by fierce internal war in which at least half a million people reportedly lost their lives. Since President Mobutu Sese Seko came to power in 1965, the internal situation has gradually stabilized. In the next two decades, several upsurges of violent internal unrest occurred but, according to governmental and non-governmental sources, at present there is no activity by any armed opposition. No part of the country is under a state of emergency. Only in one region (North Kivu), was part of the territory along the border with Uganda declared an "operational zone" during the civil war in that country, and is still classified as such. In an operational zone, an Operational War Council (Conseil de guerre opérationnel) is set up, as a special tribunal, to try military personnel on charges linked to activities affecting the State security. In an operational zone, however, the normal law is applicable and the security forces have no more extensive powers than in the rest of the country.

7. During the first half of the last decade, serious violations of human rights, including torture, were alleged to occur in the country. In 1985, the Commission on Human Rights decided to consider the human rights situation in Zaire, in conformity with the procedure provided for in Economic and Social Council resolution 1503 (XLVIII). Since 1987, the number of human rights violations in Zaire steadily decreased. In 1986, the Government decided to establish a separate ministry, the Department of the Rights and Freedoms of the Citizen (Département des Droits et Libertés du Citoyen - DDLC), headed by Vice-Prime Minister (Vice-Premier Commissaire d'Etat), Maître Nimy Mayidika Ngimbi. In 1989, the Commission on Human Rights decided to discontinue its consideration of the human rights situation in Zaire under Economic and Social Council resolution 1503 (XLVIII).

8. Zaire is party to a great number of human rights treaties and conventions. It is a party to the International Covenant on Economic, Social and Cultural Rights as of 1 November 1976 and has also recognized, as of 1 February 1977 the right of individual complaint under the Optional Protocol to the International Covenant on Civil and Political Rights. In 1987, Zaire became a party to the African Charter on Human and Peoples Rights and on 1 February 1989 it reportedly decided to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, according to information received by the Special Rapporteur at the Centre for Human Rights in Geneva, Zaire has not yet deposited its protocol of ratification with the Secretary-General of the United Nations in New York.

9. In 1989, the Special Rapporteur received no allegations that torture actually had been practised, although in two cases an urgent appeal was made to the Government of Zaire to respect the physical and mental integrity of a number of people who had been arrested (E/CN.4/1990/17, paras. 170-171). Effective measures had apparently been taken to eliminate torture and serious maltreatment. The Special Rapporteur highly appreciates the opportunity given to him by the Government of Zaire to evaluate these measures and to have consultations with the authorities about steps which may be taken eventually to strengthen the rule of law in the country.

10. Torture and inhuman and degrading treatment is explicitly and absolutely prohibited by the Constitution (art. 13). In the Penal Code, torture is not mentioned as a separate crime but is considered to be an act which is harmful to a person's physical integrity and is punishable as such (art. 63). If torture or severe maltreatment accompany other illegal acts, like abduction or arbitrary detention, it is considered to be an aggravating element leading to a more severe penalty.

11. According to Zairian law, individuals suspected of having committed a crime punishable by more than six month's imprisonment may be arrested by all members of the various law enforcement forces who have the status of Officier de Police Judiciaire (OPJ) (art. 72 of the Ordonnance 78-289 relative à l'exercice des attributions d'officier et agent de police judiciaire près les juridictions de droit commun). Junior members of these forces who do not have the status of OPJ are called Agents de Police Judiciaire (APJ); they may apprehend suspects, but the formal arrest has to be made by an OPJ. After a maximum of 48 hours following the arrest, during which an initial investigation may be held, suspects must either be released or referred to a magistrate belonging to the office of the Public Prosecutor who may order their continued detention (art. 73, para. 1, and art. 139 of Ordinance 78-289). Such magistrates (who have the status of Inspecteur de Police Judiciaire) must, if further detention is deemed necessary, refer the detainee within 5 days to a judge who may remand him in custody for a period of 15 days. Remand orders may be renewed upon request from the magistrate concerned for further periods of 30 days (arts. 29, 30 and 31 of the Code of Criminal Procedure). The detainee has to be presented to the judge in persona and has the right to be assisted by legal counsel. According to other legal provisions an arrested person has the right to ask for an examination by a doctor immediately after his arrest and the right to have his relatives informed of his arrest.

12. There are a number of law enforcement forces which are authorized to make arrest. A distinction can be made between law enforcement forces with a general mandate and agencies with a specific mandate. The most important of these law enforcement forces are (a) the Gendarmerie Nationale; (b) the Garde Civile; (c) the Agence Nationale de Documentation; (d) the Agence Nationale de l'Immigration and (e) the Service d'Action et de Renseignements Militaires.

Gendarmerie Nationale

13. The Gendarmerie is a branch of the armed forces and was established in 1972 when two other security forces still dating from the colonial period were merged. It has a general mandate for the control of law and order and is represented throughout the country; it is the main police force in the country. Two units of the Gendarmerie have a more specific task: a mobile unit which can intervene in case of civil unrest and a unit which is entrusted with the gathering of intelligence (S-2).

The Garde Civile.

14. The Garde Civile was created in 1984 by the President of the Republic and is directly responsible to him. It does not belong to the armed forces and, like the Gendarmerie Nationale, has a general mandate. It was created in order to assist the Gendarmerie in carrying out its general mandate for the control of law and order within the country. There is, however, no

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hierarchical link between the two forces. Apart from its general mandate, the Garde Civile has also some specific tasks, like the investigation of fraud, arms-trafficking, etc. In view of these specific tasks, the Garde Civile, which is still in the process of formation, is now mainly present in the border-areas, although it will gradually be represented throughout the country.

Agence Nationale de Documentation

15. The Agence Nationale de Documentation (AND) was created in November 1983. Its mandate is concerned with matters of national security and it has two branches: the Service de Documentation Intérieure (SDI) and the Service de Documentation Extérieure (SDE). For the purpose of the Special Rapporteur's visit, only the SDI is of relevance. Its main function is the prevention of any act that may harm the State security. There are AND offices in various parts of the country; AND agents are authorized to detain persons who are considered harmful to the national security. It was explicitly stated to the Special Rapporteur that AND only arrests people who have committed a criminal act as described in the Penal Code and never deprives persons of their liberty purely as a preventive measure.

Agence Nationale de l'Immigration

16. This agency, which has roughly the same task as an immigration office, carries out its function in the border areas.

Service d'Action et de Renseignements Militaires

17. The Service d'Action et de Renseignements Militaires (SARM) was created in November 1986 as the successor of another military intelligence agency which was disbanded because of notorious abuses of power by its chief and its members. According to information received by the Special Rapporteur, 12 officers were brought to trial and severely punished and 380 other officers were dismissed. The new service had to recruit and train new personnel. Its main task is to guarantee the security of the armed forces. It is authorized to arrest not only members of the armed forces but also civilians who have committed acts against the security of the army, like incitement to mutiny, the theft of arms belonging to the military etc. It has no units in the country. Being a military intelligence agency, its officers are placed within the various staff units of the armed forces.

18. The existence of a variety of law enforcement forces and security agencies leads to a rather complicated pattern of competence and responsibilities. Investigations are usually carried out by the competent authority even if the arrest has been made by another agency. If the Gendarmerie or the Garde Civile arrest a person who is found to be in possession of weapons, they will transfer the suspect to SARM if the weapons turn out to be weapons used by the army. If this is not so, the case will be investigated by the agency which arrested the person (or, eventually, by AND).

19. It was explicitly stated to the Special Rapporteur that each and every agency is bound in exactly the same way by the legal provisions regarding arrest and detention of persons. That means that in all cases the 48-hour rule and the 5-day term must be respected. If an arrest has been made in violation of the rules provided by the law, this is punishable under article 180 of the Penal Code by imprisonment of up to one year.

20. If a suspect belongs to the military, exactly the same rules apply, except that in such a case the role of the office of the Public Prosecutor is exercised by the Auditorat Militaire (office of the Chief Military Prosecutor) (arts. 198-201 of the Code de Justice militaire). Apart from SARM, the armed forces have their own military police, but since the Gendarmerie Nationale is part of the armed forces, persons belonging to the military can also be arrested by the Gendarmerie.

21. All law enforcement agencies have their own places of detention generally referred to as cachots. In the case of common crimes, the suspect is usually referred to a general prison after a relatively short period and kept there awaiting trial. In cases, however, where a person is suspected of having committed a crime against the security of the State or the armed forces, he may be kept for a considerable time in the cachot of the competent agency pending the completion of the inquiry in view of the sensitive character of the matter. In highly delicate cases, contacts with a lawyer are only permitted after the inquiry is finished, although the lawyer can discuss the case with the agency itself.

22. The activities of the various security agencies are co-ordinated within the Conseil National de Sécurité (CNS), a body which is responsible to the recently established (1989) Commissariat d'Etat à la Sécurité du Territoire et aux Anciens Combattants (Department of Internal Security).

23. The judicial system is co-ordinated by the Conseil Judiciaire, in which the judiciary as well as the Office of the Public Prosecutor and the Chief Military Prosecutor are represented. Its President has a function which is comparable to that of Minister of Justice.

24. Under the authority of the Conseil Judiciaire, all places of detention and prisons have to be visited every fortnight by magistrates of the Office of the Public Prosecutor. Persons who are found to be irregularly detained have to be released immediately.

25. When the investigation is finalized, the suspect is brought to trial. If he is charged with a crime against the security of the State, he will be tried by the Cour de Sûreté de l'Etat (Court of National Security). While according to the law no appeal is possible from the decisions of this court, the Special Rapporteur was informed that a person convicted by the Cour de Sûreté de l'Etat may go into cassation of a sentence with the Supreme Court on the grounds of violation of the law.

26. Although the legal rules are clear and in general must be deemed to be in conformity with international standards, in actual practice they were not complied with. The fact that there were many allegations of illegal and arbitrary arrests, torture and serious maltreatment (which in some cases were found to be correct, leading, inter alia, to the disbanding of the military intelligence agency) led the authorities to decide to establish the Department of Rights and Freedoms of the Citizen (Département des Droits et Libertés du Citoyen - DDLC). The Department, created by ordinance 86/268 of 31 October 1986, started its work in the course of 1987. According to the Head of the Department, Vice-Premier Commissaire d'Etat Maître Nimy Mayidika Ngimbi, DDLC's functions are threefold: informing citizens about their rights; orienting and guiding citizens as to how to deal with the various

organs of the State such as those responsible for justice, security and law and order; and providing remedies when citizens are victims of a violation of their rights.

27. In carrying out its first function, DDLC has published a vade-mecum on human rights (which is to be followed by two other volumes) in the five main languages spoken in Zaire. It has recently also started refresher courses for law enforcement personnel (in particular OPJs) on detention procedures and the treatment of detainees. A commission of co-ordination (commission de concertation) has been set up, in which, inter alia, all the law enforcement agencies are represented and which meets on a monthly basis. Agreements (conventions de concertation) have been concluded with a number of governmental organs, including the law enforcement and security agencies, in order to guarantee DDLC the possibility to carry out its mandate smoothly.

28. One of the most recent agreements has been concluded with the newly established Department of Internal Security which is responsible for the most important security agencies. In this agreement, it was stressed that persons may only be arrested in conformity with the law and that no one under any circumstances may be subjected to torture or inhuman or degrading treatment. Under the agreement, DDLC is entitled to monitor compliance with the rules on a monthly basis.

29. DDLC is specifically entitled to visit all places of detention. If there are persons detained who are not duly registered, DDLC can order their immediate release. Visits are either made on a regular, pre-announced basis or without warning. If during a visit a detainee is found to have been tortured or maltreated, DDLC can, under a recently promulgated ordinance (23 September 1989) start a procedure against the perpetrator.

30. DDLC has set up 58 local offices 26 in Kinshasa and 32 in other areas throughout the country, where individuals can file complaints about violations of their rights. Such complaints are only admissible if all legal and administative remedies have been exhausted. By the end of 1989, 5,200 complaints had been taken into consideration. Complaints may refer to violations of economic, social and cultural rights as well as of civil and political rights. Percentage-wise, complaints about violations of property rights and employment contracts score highest, followed by complaints about illegal or arbitrary arrest and detention.

31. Since a number of allegations brought to the Special Rapporteur's attention referred to situations where a person had been deprived of his liberty without being charged or brought to trial, the Special Rapporteur specifically asked whether administrative detention was practised and if so, whether this had a basis in the law. From the various replies received, it became clear that there used to be a legal basis in Décret-loi No. 1/61 of 25 February 1961 and that it was regularly applied during the period of civil strife between 1960 and 1965, together with other administrative measures such as internal banishment and house-arrest, but that this legal instrument was now considered to be obsolete. On the other hand, the Minister for Internal Security (Commissaire d'Etat à la Sécurité du Territoire) told the Special Rapporteur that administrative measures, including detention and internal banishment, were sometimes taken on his own authority. These measures were of a temporary nature and the President of the Judicial Council had to be informed. It did not become clear, however, what was the legal basis for this authority other than Décret-loi No. 1/1961.

32. The Special Rapporteur was also informed on that occasion that it may happen that if a person was suspected of offences against State security, the 48-hour rule was not always complied with. In such cases, a report had to be presented to the Minister who decided whether the suspect should be kept for a longer period. Also in such cases, the President of the Judicial Council was informed and through him the office of the Public Prosecutor. There again it remained unclear what the legal basis for this procedure was; obviously, it was not in conformity with the normal rules since the office of the Public Prosecutor was not in a position to evaluate the grounds for the arrest; it also remained unclear whether the suspect had to be presented to a judge within five days after the arrest in persona. On the other hand, the agreement between DDLC and the Department for Internal Security explicitly states that the legal terms for detention must be respected and that the arrested person must be presented to the judge who has to decide on the legality of his detention.

II. EVALUATION AND RECOMMENDATIONS

33. As stated before, the human rights situation in Zaire has considerably improved during the recent years. The Government has taken some meaningful steps to strengthen the existing mechanisms guaranteeing the respect of human rights by introducing new ones. The creation of a separate Department of Rights and Freedoms of the Citizen is, in itself, quite unique and has undoubtedly contributed to a greater awareness of the importance of human rights both with the population and with the authorities. The Department has only been operational for two and a half years and to a certain extent is still in the formation period; it is therefore too early to give a conclusive evaluation of its efficiency. Informing the people about their rights by the dissemination of material which is understandable to everyone is one of the most important requisites for the rule of law. The President of the Bar Association told the Special Rapporteur that although detained persons were entitled to legal assistance as from the moment of their arrest, in actual practice, and due to lack of information, people hardly ever resorted to a lawyer until the moment their case came before a court. Nor was it generally known that a person who did not have the necessary means to employ a lawyer could address the judge or the President of the Bar Association who then had to ask the Bar to designate a lawyer.

34. It is equally important to inform the law-enforcing authorities about the detainee's rights and to instruct them to respect the detainee's inherent dignity. The introduction of training courses for the personnel of the law-enforcement forces is, therefore, of great significance. Such courses should not only be focused on mentality training but also on the teaching of how to conduct interrogations in a manner which recognizes and respects the detainee's rights and dignity.

35. The competence of the Department of Rights and Freedoms of the Citizen to visit and inspect all places of detention concurrently with the legally prescribed periodic visits by magistrates of the Public Prosecutor's office may be an effective preventive measure against illegal arrests and detention. These, in turn, may - and in fact often did in the past - lead to torture and maltreatment. The Special Rapporteur was informed that in all cases when a detainee was not duly registered with the Public Prosecutor's office, the Department could have him released immediately. He was also informed that in all other cases where the legal provisions had seemingly not been complied

with, it was left to the Public Prosecutor's office to decide on the lawfulness of the detention. Moreover, the Department itself could, on its own initiative, table such cases during the meetings with the Judicial Council which were provided for on a monthly basis in the protocol of co-ordination concluded with that body.

36. In view of the fact that the number of alleged cases of illegal or arbitrary arrest or detention is still relatively high, the Special Rapporteur feels that the Public Prosecutor's office should thoroughly scrutinize the legality of all arrests, not only at the moment when they are registered (after the 48-hour term), but also when requests for the renewal of a remand order are made.

37. Of equal importance for the strict compliance with the legal rules is the presentation of the detainee in persona to the competent judge within five days after his arrest since this enables the detainee to inform the judge about the circumstances under which he was arrested and to provide him with all other relevant information. There again, the Special Rapporteur feels that the prevalent rules should be applied more strictly. It has come to his knowledge that in numerous cases detainees were not presented to a judge within the period prescribed by the law, or were not presented to a judge at all, although a remand order was issued.

38. Useful as the competences of the Department are, in essence they are corrective measures which - apart from cases of manifestly illegal detention - would not have been necessary if the Public Prosecutor's office and the judiciary had carried out their mandate satisfactorily.

39. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights states that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. It has not become clear to the Special Rapporteur whether the Code of Criminal Procedure explicitly gives a detained person such right to take, on his own initiative or through his lawyer, such proceedings before a court. In view of the fact that the report submitted by the Government of Zaire under article 40 of the International Covenant on Civil and Political Rights makes no mention of such legal provisions (while being very elaborate on other issues), the Special Rapporteur feels entitled to assume that such a provision does not exist. An amendment to the Code of Criminal Procedure to bring it in conformity with article 9, paragraph 4, of the International Covenant on Civil and Political Rights would be an important step to suppress and prevent illegal or arbitrary arrest or detention.

40. All law-enforcement forces have their own places of detention (cachots). As stated before, in the case of common crimes, the suspect is usually transferred to a general prison relatively soon after his arrest. Persons, however, who are suspected of having committed offences against the security of the State or of the armed forces are usually kept in the detention place of the security agency concerned until the investigation has been completed. The Administrateur-Général of Agence Nationale de Documentation told the Special Rapporteur that in such cases it was impossible to transfer the suspect to the place where accused persons awaiting trial were normally kept in view of the fact that such places of detention were relatively open and the régime for

visitors was relatively liberal. In sensitive cases, therefore, the suspect had to be detained at the agency's detention place until the investigation was finalized. The magistrates of the Public Prosecutor's office were, nevertheless, informed and once the inquiry was finished, the suspect was transferred to the Judiciary.

41. In general, the Special Rapporteur feels that it is rather undesirable if suspects are held in places run by the agency which is at the same time the investigating authority. Such a situation may easily lead to undue influence or even duress since living conditions and conditions of detention may be made subservient to the course of the investigation.

42. The Special Rapporteur feels that it would be useful to establish central detention facilities in the main cities for persons suspected of having committed security offences and who would consequently be tried by the Cour de Sûreté de l'Etat. Such detention centres should be placed under the supervision of the Judicial Council just like ordinary prisons. The various detention places of the law-enforcement and security agencies should only be used as a provisional lock-up until the arrest has been legalized. Evidence obtained from the suspect outside such central detention facilities and not confirmed by him during his stay there should not be admitted in court.

43. The Special Rapporteur was informed that a number of secret places of detention which had not been registered with the President of the Judicial Council, as required by the law, had recently been closed, and that those who had run these places of detention would be prosecuted. The Special Rapporteur is of the opinion that severe punishment of persons who exploit illegal places of detention is a highly effective preventive measure. Evidence collected in such places should not be accepted as legally obtained evidence.

44. During his mission, the Special Rapporteur visited the Central Prison of Kinshasa (Makala Prison) and two detention places (cachots) of the Service d'Action et de Renseignements Militaires and of the Agence Nationale de Documentation respectively. He was able to talk to a number of detainees in private. None of them claimed to have been subjected to torture or maltreatment in the places where they were presently kept, although a number of persons who were serving prison sentences in Makala Prison after having been tried by the Cour de Sûreté de l'Etat said they had been tortured during their preventive detention in 1984-85. The two persons kept in the AND detention place were both foreigners awaiting a decision to expel or extradite them. One of them had been kept there for about eight months, the other for about two months. Although according to the papers shown, they had been registered with the Public Prosecutor's office, they said they had never been presented to a judge. The eight persons kept in the SARM detention place had all been arrested or kept in custody (four Angolan soldiers awaiting a decision on their return to Angola) quite recently.

45. Those parts of Makala Prison shown to the Special Rapporteur were clean and well-kept. Living conditions seemed to be acceptable and medical care to be adequate. There is one pavilion for female detainees which is not separated from the other pavilions. Accused persons were not separated from convicted persons, as required by article 10, paragraph 2 (a), of the International Covenant on Civil and Political Rights. They, however, are not required to work whereas for convicted prisoners work is obligatory. According to the prison authorities, juveniles were kept in other detention places. The Special Rapporteur feels that the establishment of a separate detention centre

for accused persons, part of which could be reserved, as a separate unit, for persons suspected of having committed security-related offences, as recommended in paragraph 42, above, would be a commendable measure.

46. As regards the question of administrative detention, the Special Rapporteur feels that the Government should clarify its position on this issue. As long as it is practised, the conditions under which a person may be temporarily detained should be laid down and should be subjected to judicial control by the Supreme Court.

47. The fact that the Department of Rights and Freedoms of the Citizen is authorized to receive complaints from citizens who claim that their fundamental rights have been violated is another indication that meaningful steps have been taken to strengthen the rule of law in Zaire. The Special Rapporteur visited two of the Department's local offices in Kinshasa and talked with the main delegates of these offices. The main delegate is a person who is chosen from people who have a good reputation and authority in society and is assisted by two lawyers and an administrative staff. The local offices are easily accessible to the public. The Special Rapporteur was impressed by the commitment of the persons he met. He was informed that sometimes the authorities to whom the complaint referred were unco-operative and were obviously not yet used to the new developments, he was also informed that members of some of the law-enforcement forces still tended to be rather indifferent to the rights of the citizens who often fell victims to harassment. It could, therefore, be recommendable to strengthen the position of the local offices in order to enable them to take corrective measures on the spot.

48. The Special Rapporteur could not avoid noting that the resources of the local offices were minimal. No means of transport was available and there was no telephone. Under such circumstances, work was extremely difficult and was certainly less effective than if it was done in more adequate conditions. In view of the priority given to human rights issues by the Government, it may be recommended that the local offices be provided with appropriate equipment in order to enable them to carry out satisfactorily their highly important task.

49. In conclusion, it can be said that until recent years, the legal and institutional framework in principle guaranteed the respect for human rights quite satisfactorily, but that in actual practice the system did not work properly. The result was that in a considerable number of cases even the most basic human rights, like the right to physical and mental integrity, were violated. The creation of DDLC can be seen as a remarkably bold effort to revitalize the long-neglected system of checks and balances. The Zairian Government must be commended since it decided to approach the question in a comprehensive way, reflected in the Department's work programme: consciousness-building, training and formation, co-ordination between the various Government organs and redress. It is precisely this comprehensive character which makes the creation of the DDLC a unique experiment. As stated earlier, it is still too early to evaluate the outcome of the experiment. But it can only be successful if all branches of Government are fully prepared to strictly comply with the rules.

50. It has to be recognized that the authorities are hampered in carrying out their programme by the fact that the existing infrastructure is badly deficient and as a developing country Zaire will face tremendous difficulties in improving this infrastructure. As the Special Rapporteur said in previous

reports: everyone should be aware of the fact that respect for civil and political rights depends not only on political will - indispensable as that may be - but often also requires costly investments. It is in particular with regard to this second element that international solidarity can play a decisive role.

51. The phenomenon of torture has considerably decreased in Zaire. Satisfactory as this may be, no government should be content with that statement of fact. It is as important to strengthen the structure which may prevent its recurrence. It is a well-known fact that illegal or arbitrary arrests and detentions may easily lead to situations where torture is likely to be practised. It is therefore only logical that the DDLC has made the extinction of such illegal arrests one of its main objectives. The following recommendations should be seen in that context:

(a) The procedure for the ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be completed at the earliest possible date;

(b) The training of law-enforcement personnel on human rights issues should get high priority;

(c) The provisions of the law with regard to arrest or deprivation of liberty should be strictly complied with. The Public Prosecutor's office should in each case carefully scrutinize the conditions under which the arrest is made and the grounds on which it is made. No person should be remanded in custody until he is seen by the competent judge;

(d) As long as administrative detention is still practised, it should only be applied under independent judicial control by the Supreme Court;

(e) The Code of Criminal Procedure should be amended to give a detained person the right to bring proceedings before a court in order to have the lawfulness of his detention decided upon without delay;

(f) All officials who have not complied with the legal provisions for arrest or detention should be either disciplined or prosecuted, without delay; if they have abused their authority by seriously violating basic human rights, including torture, they should be severely punished;

(g) Special detention centres under the supervision of the Judicial Council should be established for people who are accused of having committed crimes against the security of the State or the armed forces;

(h) Only evidence obtained under interrogation in such detention centres should be admitted in court;

(i) All possible efforts should be made to provide the local offices of the DDLC with the equipment necessary for the effective exercise of their tasks;

(j) The competences of the officials of the DDLC to take corrective measures in cases of abuse of authority by law-enforcement personnel against individuals should be strengthened.

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COMMISSION ON HUMAN RIGHTS
Forty-sixth Session
Item 12 of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS; NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Regional arrangements for the promotion and protection of human rights in the Asian-Pacific region

Report of the Secretary-General

1. By its resolution 1989/50, the Commission on Human Rights, recognizing that regional arrangements made a major contribution to the promotion and protection of human rights and that non-governmental organizations might have a valuable role to play in that process and bearing in mind that intergovernmental arrangements for the promotion and protection of human rights had been established in other regions, requested the Secretary-General to continue to assist and encourage the Executive Secretary of the Economic and Social Commission for Asia and the Pacific (ESCAP) to pursue the establishment, within existing resources, of a depository centre for United Nations human rights materials in the Commission at Bangkok, the function of which would include the collection, processing and dissemination of such materials in the Asian and Pacific region. The Commission also encouraged United Nations development agencies in the Asian and Pacific region to co-ordinate with ESCAP their efforts to promote the human rights dimension in their activities. The Commission also requested the Secretary-General to ensure a continuing flow of human rights material to the ESCAP library in Bangkok for appropriate dissemination in the region and to submit a further report to the Commission at its forty-sixth session which would include information on progress achieved in the implementation of resolution 1989/50.

GE. 89-13974

2. On 5 April 1989, the forty-fifth session of ESCAP adopted resolution 45/2 entitled "Establishment of a depository centre for United Nations human rights materials". In its operative paragraph the resolution requests the Executive Secretary "to pursue, within existing resources, the establishment of a depository centre for United Nations human rights materials, the function of which would include the collection, processing and dissemination of such materials in the ESCAP region". That resolution also welcomes the "designation by the Executive Secretary of the Social Development Division of the Secretariat as a regional focal point on human rights".

3. In a letter dated 8 May 1989 addressed to the Centre for Human Rights, the Executive Secretary of ESCAP welcomed the support and co-operation of the Centre for Human Rights in the pursuit of the establishment of the regional depository centre, as mandated by ESCAP resolution 45/2.

4. In a letter dated 26 June 1989 addressed to the Executive Secretary of ESCAP, the Centre for Human Rights drew the attention of the Executive Secretary to resolution 1989/50 of the Commission on Human Rights and requested him to inform the Centre as to the possible forms of assistance the Centre might provide to ESCAP with respect to the implementation of the above-mentioned resolution.

5. In a further letter dated 25 August 1989, addressed to the Centre for Human Rights, the Executive Secretary of ESCAP noted that, following the adoption of ESCAP resolution 45/2, the ESCAP library now serves "as depository centre for United Nations human rights materials". The letter indicated that the ESCAP library does not undertake external dissemination of publications and documentation on any subject. However, it does distribute comprehensive bibliographies, references and reading lists throughout the region. These include sources of all materials received by the library. The letter emphasized that if the ESCAP library is to become a disseminating centre for human rights materials (in hard-bound copies) it would be necessary to develop a clearing-house operation. This would require sufficient additional resources.

6. The Centre has provided the ESCAP Library with an initial stock of 25 copies of all its human rights information and reference materials issued so far which include: United Nations Action in the Field of Human Rights; Status of International Instruments; Questions and Answers; A Compilation of International Instruments; ABC-Teaching Human Rights: Practical Activities for Primary and Secondary Schools; Human Rights Newsletter; the fact sheet series; the human rights study series; ad hoc publications, including the Application of the International Covenant on Civil and Political Rights under the Optional Protocol by the Human Rights Committee. As focal point for human rights, the ESCAP library will receive adequate quantities of all subsequent information and reference materials issued by the Centre.

7. Following consultations with Governments of the region, the Centre for Human Rights is endeavouring to hold in the spring of 1990 in Manila, the Philippines, within the framework of the Advisory Services and Technical Assistance programme and the World Public Information Campaign for Human Rights, an Asian-Pacific regional workshop on various human rights issues, subject to the availability of financial resources. This will include regional and national institutions and arrangements for the promotion and protection of human rights. Governments, non-governmental organizations, the media and other interested institutions and individuals are expected to participate.

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COMMISSION ON HUMAN RIGHTS
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Item 12 of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Regional arrangements for the promotion and protection of human rights in the Asian-Pacific region

Report of the Secretary-General

Addendum

In addition to the information contained in the report of the Secretary-General on regional arrangements for the promotion and protection of human rights in the Asian-Pacific region, the following has been received from the Governments of Mongolia, New Zealand, the Philippines and Thailand. This information was transmitted to the Secretary-General in accordance with paragraph 2 of Commission on Human Rights resolution 1989/50. Information received from the following United Nations development agencies in the Asian-Pacific region is also given below: Centre for Social Development and Humanitarian Affairs, Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Development Programme (UNDP), Food and Agriculture Organization of the United Nations (FAO) and United Nations Educational, Scientific and Cultural Organization (UNESCO). This information was transmitted to the Secretary-General in accordance with paragraph 5 of Commission resolution 1989/50.

GE.89-13999/4792A

A. Information received from countries of the Asian-Pacific region

MONGOLIA

[Original: Russian]
[21 September 1989]

The Mongolian People's Republic took part in the Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region which was held at Colombo, Sri Lanka. The Seminar was regarded in our country as a practical step towards the development of regional co-operation between States in the field of human rights and in the broader context of the humanitarian area. The development of such co-operation is a matter of especial urgency for the Asian and Pacific region, where the most pressing problem is presented by poverty, hunger, illiteracy amd unemployment - the most flagrant forms of violation and disregard of human rights and fundamental freedoms. We consider ESCAP entirely right in paying close attention to the question of the human dimension in the social development of the countries of the region and in relations between them.

Mongolia is giving priority to strengthening the role of the human factor in the country's social and economic development and is taking steps steadily to expand conditions in which that priority can be applied.

We consider that the following fact should be the focus of attention in the further activities of the United Nations in the field of human rights in Asia and in general: that the decisive elements of the human dimension in world development are the right of peoples to peace and development and their right to a free choice of social structure.

Mongolia has acceded to all the conventions listed in paragraph 89 of the report of the Seminar with the sole exception of the Convention and Protocol relating to the Status of Refugees. Our Government is attentive to the idea of assisting the States members of ESCAP in acceding to the relevant instruments of international law in the field of human rights. In this connection it remains of the opinion that a more suitable and purposeful way would be to extend such assistance under the programmes of advisory services in the field of human rights.

Mongolia is in favour of strengthening the role of the organizations of the United Nations system, and of ESCAP in particular, in the process of expanding co-operation in the social development field in Asia and the Pacific. It notes with satisfaction that ESCAP continues to receive, process and distribute information in the human rights field. We think that this might encourage the development of regional co-operation in a broader humanitarian context and the establishment of a United Nations research centre in this important field.

The Government of the Mongolian People's Republic is endeavouring to contribute, to the best of its ability, to the cause of developing international co-operation in Asia and the Pacific in the humanitarian field.

NEW ZEALAND

[Original: English]
[13 September 1989]

The Government of New Zealand is pleased to take this opportunity to comment on the implementation of Commission on Human Rights resolution 1989/50 since it attaches particular importance to the promotion of human rights activities in the Asian and Pacific region. The Secretary-General may be interested to note that in May this year the New Zealand Government held a policy conference entitled "Aotearoa/New Zealand and Human Rights in the Pacific and Asia Region". This conference involved about 150 representatives of New Zealand interest groups, non-governmental organizations, government departments and individuals in a discussion on this country's human rights policies and priorities, with particular reference to the Pacific and Asian region. In the Prime Minister's opening speech at the conference, the Right Honourable David Lange stated his support for increased regional co-operation on human rights. (In particular, the Prime Minister expressed the hope that the time would come when the countries in the region would be ready to establish a regional human rights body to review the status of fundamental rights and freedoms.) New Zealand, then, supports the concept of regional arrangements for human rights in the Asian-Pacific region.

The New Zealand Government is conscious, none the less, of the need to ensure the widespread support of regional countries for any specific proposal. That support is most likely to be forthcoming if initial proposals focus on information-related and other similar technical activities.

As a first step, New Zealand would give priority to moves to encourage States in the region which have not yet done so to ratify the major human rights treaties already drawn up by the United Nations. It should be noted that this was also one of the conclusions reached by the seminar on the protection of human rights in the Asian region organized by the United Nations which was held in Colombo in 1982. For any regional human rights mechanism to function effectively it would seem desirable for the countries of the region first to have demonstrated their acceptance of universal human rights standards by ratifying the relevant instruments.

New Zealand believes that the provision of advisory and technical assistance to countries of the region through the United Nations advisory services programme can make a positive contribution towards this end. New Zealand is a firm supporter of this programme and contributes to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights. The programme can provide practical advice, expertise and financial support which can enable countries to prepare for ratification, for example by providing assistance with drafting appropriate legislation on human rights or by holding education seminars on the practical implications of ratification. It can also provide technical assistance to States to meet their obligations under the various instruments, for example with the preparation of their periodic reports.

New Zealand regards the holding of United Nations sponsored seminars, or training courses for the countries of the region (such as the seminar on national, local and regional arrangements for the protection of human rights in the Asian region already referred to, the 1987 Bangkok regional training

course on human rights and the forthcoming seminar to be held in Manila in December) as providing a further opportunity to make progress. New Zealand would urge the widest possible regional participation in such seminars to ensure a useful discussion, and an effective exchange of views.

New Zealand would also stress the importance of co-ordination and co-operation amongst existing United Nations bodies, other international organizations (such as the Human Rights Unit of the Commonwealth Secretariat) and non-governmental organizations (such as the Law Association for Asia and the Pacific (LAWASIA)) in working towards the implementation of regional human rights arrangements. A number of these organizations have already done much work towards promoting human rights activities in Asia and the Pacific and every effort should be made to utilize rather than duplicate their existing expertise. The Asian-Pacific region could also benefit from the experience and advice of the existing regional commissions in Europe, Africa and the Americas.

ESCAP depository centre for human rights materials

New Zealand believes that a depository centre for United Nations human rights materials within the Social Development Division of ESCAP would make a positive contribution to the furthering of human rights in the region. A centre with the express purpose of serving as a "clearing-house" for the exchange of United Nations human rights information and educational materials relevant to the region - and perhaps a training and research role might also be contemplated eventually - should gain widespread regional support. The New Zealand Government would be pleased to co-operate with such a centre and to facilitate an exchange of information between the centre and its own national human rights institutions and organizations. The centre would also make use of existing material held, for example, by the Commonwealth Human Rights Unit, UNESCO and the Centre for Human Rights.

In order for the proposal to go forward, New Zealand considers that it is now essential to establish a clear and detailed mandate setting out the functions of the proposed centre, for regional States' approval. The mandate should be so defined as to ensure that the centre would not duplicate but rather complement existing information activities such as those of the Centre for Human Rights. The question of funding and resourcing the facility must also be addressed at an early stage. New Zealand is pleased to note that the present solution refers to the establishment of the centre "within existing resources", since it is doubtful that relying on voluntary contributions by regional countries would raise sufficient funds to make the project viable. It is still not clear, however, exactly how, or from what existing budget, the centre would be funded or indeed, what the cost is likely to be. These points need clarification.

PHILIPPINES

[Original: English]
[13 September 1989]

The Philippine Government interposes no objection to the establishment of a human rights depository centre in Bangkok and fully supports the possible creation of regional arrangements for the promotion and protection of human rights in the Asia-Pacific region.

THAILAND

[Original: English]
[18 September 1989]

Thailand affirms its support, within existing resources, for the establishment of a depository centre for United Nations human rights materials at ESCAP headquarters in Bangkok, as well as welcoming the designation by the Executive Secretary of the Social Development Division of the secretariat as a regional focal point on human rights.

In this connection, Thailand co-sponsored resolution 45/2 entitled "Establishment of a depository centre for United Nations human rights materials" at the forty-fifth session of ESCAP, held between 27 March and 5 April 1989.

B. Information received from United Nations development agencies in the Asian-Pacific region */

CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS

[Original: English]
[17 August 1989]

The objectives of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) are to train personnel in criminal justice administration and to conduct research and studies in the field of crime prevention and the treatment of offenders, for the benefit of the countries of the Asia and the Pacific region.

To this effect, UNAFEI, since its establishment in 1961, has organized, on a regular basis, various seminars and training courses in crime prevention and criminal justice - sometimes in co-operation with the Centre for Human Rights - for numerous officials and policy-makers from countries of the region as well as other parts of the world. Many of these important projects were closely related to human rights issues, such as the 74th International Seminar on Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration, held at the Institute's headquarters at Fuchu, Tokyo, in 1987. Thus UNAFEI is contributing in an effective way not only to viable and humane crime control efforts, but also to the maintenance of the rule of law and the protection and promotion of human rights and fundamental freedoms.

In this endeavour the Institute co-operates closely with the Economic and Social Commission for Asia and the Pacific at Bangkok in all matters of mutual interest. The Regional Adviser for Crime Prevention and Criminal Justice, assigned to ESCAP with the generous financial support of the Government of Japan, provides an additional useful link between the Institute and the Commission.

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*/ The full texts of these replies are available for consultation in the Secretariat files.

This year ESCAP hosted the Asia and Pacific Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the first of a series of five regional meetings convened to discuss the substantive items included in the provisional agenda of the Eighth Congress, to be held in 1990. On this occasion emphasis was placed on human rights in the administration of justice, as evidenced, for example, in paragraphs 43, 76, 83 and 89 of the report. In the debate on the various draft instruments, including protection of juveniles deprived of their liberty, role of lawyers and prosecutors, and use of force and firearms by law enforcement officials, special attention was also given to human rights matters.

A brochure on UNAFEI and the report of the Asia and Pacific Regional Preparatory Meeting are enclosed. **/

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[Original: English]
[31 August 1989]

The link between promotion and protection of human rights and the protection of refugees is a close and direct one. At the thirty-ninth session of the Executive Committee of the High Commissioner, UNHCR's protection activities were presented in their human rights context and the Executive Committee took note, in its conclusions, of "the direct relationship between the observance of human rights standards, refugee movements, and the problem of protection".

UNHCR participated fully in the activities connected with the 40th Anniversary of the Universal Declaration of Human Rights and the bicentenary of the French Declaration of the Rights of Man and the Citizen. We are also, as you know, co-operating with the Centre for Human Rights in seminars and other promotional activities to further the understanding of human rights principles and their application to our work.

With respect to Asia, in particular, the Comprehensive Plan of Action adopted at the Conference on Indochinese Refugees which was held in Geneva in June 1989 takes specific note of the link between the Universal Declaration of Human Rights and the 1951 Convention relating to the Status of Refugees. The Plan of Action explicitly linked the criteria for the determination of refugee status to human rights standards. In implementing this decision, UNHCR has included in its training of officials from Asian countries a special component on human rights issues. We have just completed the first round of training in South-East Asia and are pleased to report that this part of the programme was received with a great deal of interest and approval.

Further to paragraph 5 of resolution 1989/50, and in view of the continuation of our training activities for government officials in South-East Asia, UNHCR will continue to use and benefit from the resources and

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**/ These documents are available for consultation in the secretariat files.

co-operation provided by the library of the Economic and Social Commission for Asia and the Pacific in Bangkok. I believe this collaboration will prove, as in the past, of great assistance to us in our efforts for further promotion and dissemination of human rights and refugee protection principles.

UNITED NATIONS DEVELOPMENT PROGRAMME

[Original: English]
[25 September 1989]

The resolution has been studied with great care in UNDP, and in particular in the division for the regional programme within the Regional Bureau for Asia and the Pacific; and I can assure you that UNDP is prepared to comply with the request in paragraph 5 of the resolution to work closely with the Economic and Social Commission for Asia and the Pacitic to promote and protect human rights in the region.

UNDP does not, however, at this stage have any particular comments on the implementation of the resolution.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]
[10 August 1989]

FAO would welcome closer co-ordination with ESCAP in the promotion of the human rights dimension in the activities of the two organizations. Such co-ordination could be especially relevant in the fields of the status of women agrarian reform and disablement. As an immediate step, FAO intends to send to ESCAP from now on, FAO documents related to human rights issues.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC
AND CULTURAL ORGANIZATION

[Original: English]
[22 September 1989]

UNESCO organized in 1984, in Seoul, a Regional Expert Meeting on Teaching and Research in International Law. Following this meeting, UNESCO's Regional Office for Asia and the Pacific launched an International Law Newsletter which is brought out twice a year. Already four issues of the newsletter have been published. A copy of the report on the expert meeting as also a set of the previous issues of the newsletter are enclosed.

In addition, member States have been encouraged to promote human rights in the recent past as under:

I. Support to LAWASIA for

(a) publication:

(i) LAWASIA Newsletter:

(ii) LAWASIA Bulletin;

(iii) Report of the Seminar on Women in Law.

(b) the organization of a subregional seminar on the Pacific Charter on Human Rights, held in Apia, Western Samoa, from 15 to 17 May 1989.

II. Translation of human rights instruments:

(i) Universal Declaration on Human Rights (Thai);

(ii) The International Bill of Human Rights: Normative and Institutional Development 1945-1988 (Hindi, Lao, Vietnamese).

III. Support to National Commissions for campaign and other promotional activities:

Support has been provided to the Commission on Human Rights for the Philippines for the preparation and publication of a Primer on Human Rights in Tagalog or any other vernacular (50,000 copies).

IV. The Regional Office for Asia and Pacific is examining requests from Bangladesh and Sri Lanka for organizing national seminars on human rights.